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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,229	12/31/2003	Sven Schwerin-Wenzel	103580.00022/2003P00074US	6636
54975	7590	07/22/2009		
HOLLAND & KNIGHT LLP			EXAMINER	
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BOSTON, MA 02116-3889				
			ART UNIT	PAPER NUMBER
			3629	
			MAIL DATE	DELIVERY MODE
			07/22/2009 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/750,229

Applicant(s)

SCHWERIN-WENZEL ET AL.

Examiner

BOB CHUMPITAZ

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/7/2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 28-47 is/are pending in the application.
- 4a) Of the above claim(s) 3-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 28-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The following is a Non-Final Office action in response to communication received May 7, 2009. Claims 1, 29 and 37-47 have been amended, claims 3-27 have been cancelled. Therefore, claims 1-2 and 28-47 are pending and addressed below.

Response to Amendments

In light of amendments to claims 37-47, the Examiner withdraws the claim objections.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 29, 37 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lineberry et al. (US 2002/0169649 A1, hereinafter Lineberry) in view of Zhang et al. (US 2002/0188542, hereinafter Zhang) and in further view of Marpe et al. (US 2002/0184191 A1, hereinafter Marpe) and in further view of Sankaran et al. (US 2002/0133444 A1, hereinafter Sankaran).

As per claims 1 and 37, Lineberry discloses a method for facilitating monitoring human resources management information and an article comprising a machine readable storage

medium, storing instructions thereon operable to cause a machine to perform operations ([paragraph] [0045] a system and method that facilitate integration of one corporate entity into another corporate entity and wherein an integration area include human resources), but does not expressly disclose providing a single logical physically distributed information system across one or more information systems of at least two enterprises.

However, Lineberry teaches a method in a computer for generating an acquisition integration project plan [0012]. Furthermore, Lineberry teaches providing a strategy for managing integration efforts from day one. In addition, the Acquisition Integration Framework (AIF) tool facilitates the sharing of integration best practices and lessons learned (Fig. 7). Lastly, Lineberry teaches wherein a computer program embodied on a computer-readable medium is provided which comprises a code segment that manages integration areas for acquisition integration [0018].

In addition, Zhang teaches compensation data processing having a single logical physically distributed information system across one or more information systems of at least two enterprises ([0006] a computer system retrieving compensation data from a first business entity and from a second business entity; and [0029] a compensation data exchange software module that aligns jobs from a first company to jobs of a second company).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method and system for developing an acquisition

integration project plan of Lineberry to include the information system executing compensation alignment activities as taught by Zhang in order to facilitate data transfer between business-to-business information systems.

Lineberry further discloses providing an individually configurable user interface remotely connected to said single logical physically distributed information system ([0002] integrating an acquired company with an acquiring company and assimilating a newly acquired asset or company with another asset or company, [0045] discloses the following integration phases: pre-due diligence, due diligence, and post sign/pre close, pre close, and transition to operations, where pre-due diligence represents the pre-restructuring activities, the due diligence, post sign/pre close, and pre close activities represents the restructuring activities, and the transition to operations represents the post restructuring activities; and [0059] labor relations, employment practices employee services implementation and a compensation integration area, where the integration between the two companies achieves realignment of compensation; and [0054] one of user devices 14 includes a work station 54 located at a remote location; and [0051, 55-57] user interface 100 for an acquisition integration framework tool; workstations are coupled via internet link or are connected through the intranet...user system via a telephone link...link exists where user can notify administrator).

Lineberry further discloses populating said individual configurable user interface with monitoring information applied to planning, managing, and assessing human resources in

at least one of an integration, a merger, an acquisition and a spin-off of said at least two enterprises ([0057-67] main user interface 110 includes headings for Commercial, Operational, Human Resources, Legal, and Financial, under each heading are groupings of pre-defined integration areas, which are selectable by a user; see also [0076-78] the use of system 10 provides an integration team with the resources needed to perform the acquisition integration tasks involved when combining one business entity into another), wherein said monitoring information comprises,

planning organizational movement of employees ([0046] using the pre-defined integration areas and integration events, a user is able to construct a customized integration plan using those areas and events the user, for example an integration manager for an upcoming acquisition integration, sees as being pertinent to their acquisition integration; see also [0078] user is provided a integration project management tool where they can prepare their own acquisition integration plan by selecting integration areas and events which the integration manager user determines is relevant to their integration of an acquisition; see also [0016, 57] electronic interface that allows selection of at least one of a plurality of integration areas... main user interface includes human resources integration area which includes organization development, labor relations, employment practices and employee services implementation; see also [0700-721] migration, integrate operations and manage transition phase).

Lineberry discloses spreadsheets listing pre-defined integration areas and a list of pre-defined integration events for each integration area [0041]; and methods and system which facilitate clear communication and tracking of tasks performed in connection with integration, and a list of deliverables used to determine whether all tasks associated with a particular integration event have been completed [0044-45, 69-70] and an acquisition main interface [graphical] which includes selectable integration areas including employee benefits and compensation [0057]; but does not expressly disclose tracking employees through various rankings, job titles, and locations within at least one enterprise of said at least two enterprises, providing a list of jobs within at least one enterprise of said at least two enterprises, tracking performance levels and promotion requests of said employees, and redeploying resources of at least one enterprise of said at least two enterprises.

However, Marpe teaches managing tools that include a reporting and tracking tool which allow the user to access templates, create, store and retrieve documents and generate reports [0005, 17, 39]. In addition, Marpe teaches screening and prioritizing candidates, performing synergy assessment and performing valuation [0668-674, 684]. Marpe also teaches status reports that may relate to projects such as customer, customer service, employees, financial, and technology [0174]. Furthermore, Marpe teaches a merger and acquisition engine which provides knowledge management and delivery capabilities to facilitate the learning and

execution of merger related work which improves the ability to manage change resulting from merger and acquisitions [0096]. Lastly, Marpe teaches a merger site map that tracks activities and duration of activities; and management tools that include a reporting and tracking tool, decision management tool, execution tool; and a deliverable repository function which allows users to create, modify and track all deliverable types available in the workbench for themselves, others and teams within a merger and acquisition [0106, 168-172, 460, see also Table 12 and associated text].

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system and method for company integration of Lineberry and the method and system for developing an acquisition project plan of Zhang to include managing, planning and tracking tools as taught by Marpe in order to manage and track progression of activities and the duration of activities throughout the consolidation process along with all types the deliverables and/or events required to be monitored during the business to business transition process and in order to facilitate the integration of employees.

The Lineberry/Zhang/Marpe combination does not expressly:

“filtering, via a headcount analysis user interface, one or more organizational units of a first enterprise; displaying, at the headcount analysis user interface, a headcount of the first enterprise during a specified time period; and modifying, via a headcount planning-

module, current headcounts of the first enterprise according to headcount information from a second enterprise.”

However, Sankaran teaches a SpendCap Manager™ module that distributes resources to all business managers and receives requests for increase in the allocation of resources ([0021] see also Fig. 2 and associated text). The SpendCap™ Manager, simplifies planning by easily accommodating organizational needs and changes. The organizational hierarchy 404, users 402, spend accounts 406, business drivers, and plan timing elements of a business can be defined and customized by users 602 with administrative rights or administrative access via an easy-to-use interface. Changes to this information can be done in real time. This capability is especially valuable for companies that are growing quickly, and those that undergo frequent merger and acquisition or re-organization activities [0053]. The SpendCap application is easily configured through use of a configuration functionality preferably implemented via a configuration tab. The areas for setup and configuration include departments, users, spending accounts, models, business drivers, currency management, cycle settings and spreading methodology. In this area of the application, users that have been setup with admin capabilities can add and delete departments, users, accounts, headcount categories and types [0054]. Headcount 1004 is a business driver and is represented by the headcount plan object. The headcount plan object contains the total headcount of the department, including the start/end date, the headcount type with maps to salary or hourly rate [0071-72].

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Lineberry/Zhang/Marpe combination to include a headcount planning module and analysis user interface as taught by Sankaran in order to effectively plan and manage the processes involved in a merger and acquisition which takes into account an employee headcount value during the several portions of the business to business integration process.

As per claims 29 and 40, the Lineberry/Zhang/Marpe/Sankaran combination discloses all of the elements of the claimed invention but do not expressly disclose:

displaying, at the headcount analysis user interface, details of at least one of said at least two enterprises, including previous headcount transitions, predicted headcount transitions, and employee turnover rates; and creating, via the headcount planning module, a unit at the first enterprise to accommodate employees at the second enterprise.

However, Sankaran teaches an easy-to-use interface which allows for SpendCap™ Manager top-down planning capabilities which allows companies to rapidly inform the organization of changes in the business. Cost center managers in an organization can determine their headcount and other spending based on their business requirements and their spending capacity [0014, 64]. Sankaran further teaches various screen shot displays of the SpendCap™ Manager which is configurable by user ([0086]; see also Figs. 7, 10, 12, 13, 16 and associated text). Lastly, Sankaran teaches creating a department object in step 207. A department object contains its assigned spending capacity and expenses of

the department 109 of the user 201 organized in multiple plan objects. A plan object represents a category of spending of the department 109, such as headcount, salary, travel expenses, and miscellaneous spending [0041].

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Lineberry/Zhang/Marpe/Sankaran combination to include a SpendCap™ Manager interface as taught by Sankaran in order to access a business headcount requirement in association with a specific business need.

Examiner notes, with respects to claims 29 and 40, Lineberry discloses an acquisition integration planning electronic interface, however Lineberry fails to expressly disclose "...details....including previous headcount transitions, predicted headcount transitions, and employee turnover rates." However the specific types of details being displayed via the analysis interface, is deemed to be nonfunctional descriptive material and is not functionally involved in the steps recited. The providing of a headcount interface would be performed the same regardless of what detail type is being displayed. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F .2d 1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); *In re Lowry*, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir.1994).

Claims 2 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lineberry in view of Zhang in further view of Marpe in further view of Sankaran and in further view of Adler (US 2002/0169658 A1).

As per claims 2 and 38, Lineberry/Zhang/Marpe/Sankaran disclose claim 1 as rejected above but do not expressly disclose:

adapting the individually configurable user interface to a role of a user and a phase of the merger, wherein the role of the user comprises one or more of an internal expert and an external expert of at least one of the enterprises, and said internal expert is selected from the group consisting of an executive, an employee, a manager, an investor, and an owner of one of the enterprises, wherein the external expert is selected from the group consisting of a consultant, an advisor, a supplier, an analyst, and a specialist.

However, Lineberry teaches communicating and assigning tasks to internal and external resources; and a method in a computer for generating integration project plan; and where each integration event associated with a phase in an acquisition process receives at least one user selection; and displaying at least one of a name of a person responsible, a commentary for each user selected, and corresponding integration areas as an acquisition integration project plan; and providing information regarding status of integration events; and an electronic interface for selecting at least one of a plurality of integration areas, identifying responsible person for each integration area, and requesting from interface percentage completion for each integration event; and an integration manager; and a target management user interface; and providing a user with knowledge repository based on input from subject area knowledge experts [0010, 0012-16, 45, 46, 57, 67, 78]. Also,

Marpe teaches multiple reporting and tracking functions, namely an executive dashboard, status reporting, key milestones, and project planning [0070, 0171-172].

In addition, Adler teaches a set of modeling and analysis tools to help companies make informed strategic decisions in complex, rapidly changing market environments for business transformation such as mergers and acquisitions ([0022, 31, 52, 80, 84-90, 98, 101, 112, 126], see Figs. 2-3(A) and associated text) executives may have responsibility for business units while managers manage individual line-employees; analyst access information via graphical user interface; interfaces are bi-directional enabling import of data from external third-party data sources and export data to external users or data management systems).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Lineberry/Zhang/Marpe/Sankaran combination to include different import/export graphical user interfaces as taught by Adler in order to provide users with the capabilities to conduct strategic decision making pertaining to business issues such as mergers and acquisitions and enabling users to focus on different aspects of the integration process using the user interfaces.

Claims 28, 31-36, 39 and 42-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lineberry in view of Zhang in further view of Marpe, in further view of

Sankaran in further view of Adler and in further view of Mittal et al. (US 2003/0125970, hereinafter Mittal).

As per claims 28 and 39, the Lineberry/Zhang/Marpe/Sankaran/Adler combination disclose claims 2 and 38 as rejected above but do not expressly disclose wherein:

providing a list of jobs within at least one of the at least two enterprises comprises.
providing a list of jobs within at least one of said enterprises comprises providing a graphical user interface to display the individually configurable user interface; said graphical user-interface permitting the user to view: job descriptions for filled or open positions, a list and description of open positions, a list and description of filled positions, a planning time, and a time interval for optimized completion of said management of human resources; said graphical user interface further allowing the user to add, delete, and edit said open and filled positions.

However, Mittal discloses a system for real time interactive recruitment having job position information including a number of empty job positions ([0048] discloses a jobs database containing information about all available jobs, and [0007, 39, 72, 82] user interface on internet, and [0019, 68] & Fig. 10: editing, delete actions).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method and system for developing an acquisition integration project plan of the Lineberry/Zhang/Marpe/Sankaran/Adler combination to

include the job position information as taught by Mittal in order facilitate matching the job candidate to the best matching job position.

The Lineberry/Zhang/Marpe/Sankaran/Adler/Mittal combination discloses all of the elements of the claimed invention but fails to explicitly disclose "a list of filled job positions and a description open positions and adding positions".

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method and system for developing an acquisition integration project plan of the Lineberry/Zhang/Marpe/Sankaran/Adler/Mittal combination to include a number of filled job positions and a job description for each type of job position because it is old and well known in the art of employee recruitment to provide to potential employees descriptions of the jobs that they may want to apply for in order to educate the job seeker on the particular position that they are seeking. It is also old and well known to notify job applicants when job positions are open or have been filled in order to ensure that job seekers will not apply for positions that have already been filled. It is also old and well known allow editing, delete and adding functions for employers or users posting job opening information.

As per claims 31 and 42, Lineberry/Zhang/Marpe/Sankaran/Adler/Mittal discloses claims 28 and 39 as rejected above, but Lineberry, Marpe, Adler, Sankaran and Mittal do not expressly disclose an interface for employees to make requests for one or more of a promotion, an internal

reassignment, a personnel transfer, a special payment request, and a change of personnel groupings.

However, Zhang teaches a computer used for inputting information [0050-51], and a graphical user interface where a user of the browser can review and/or manipulate the displayed data [0037], and compensation component mapping, where the mapping of component fields (e.g. base pay to salary) change infrequently even though the data in the fields change often (e.g. due to pay adjustments, promotions, etc.) [0029, 34]. Furthermore, Zhang teaches a report generator that sends report data as desired to appropriate business entities (e.g. entities that have requested and/or paid for specific reports) [0052], and where a request can be made using a computer implementing the CDEM [0047].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method and system for developing an acquisition integration project plan of the Lineberry/Marpe/Sankaran/Adler/Mittal combination to include the option where a user may place a request via a graphical user interface as taught by Zhang in order to provide employees with a method for requesting compensation information and to efficiently expedite the requested information via the compensation data exchange modules (CDEMs).

As per claims 32 and 43, Lineberry further discloses:

providing an organizational planning interface on said graphical interface (Fig. 13: organizational chart and [0018-19] computer program embodied on a computer readable medium which comprises a code segment that manages integration areas for acquisition integration, a code segment that organizes integration events for each integration area);

said organizational planning interface facilitating a redeployment of one or more employees by providing a panel and information for an overview of at least one enterprise of said at least two enterprises, a functional overview, a divisional overview, and a status overview of at least one of the enterprises ([0028] AIF overview user interface; see also [0059] a human resources integration area heading includes, in the embodiment shown, pre-defined integration areas for communication, culture, and strategy, including organization development, labor relations and Figs. 8, 10: overview).

As per claims 33 and 44, Lineberry further discloses the organizational planning interface ([0021] a computer readable medium executable by a computer for receiving user selections or pre-defined integration areas, receiving user selections of pre-defined user events for the selected integration areas and generating an acquisition integration plan; and AIF user interface [0074-75]) further includes:

information *for* a financial impact ([0045, 57, 58, 60] financial integration area; see also Fig. 5: financial plan),

Lineberry does not expressly disclose one or more issues *for* employee redeployment of at least one of said enterprise merger, said acquisition, said spin-off, and said integration, wherein the one or more issues *for* employee redeployment are presented according to a priority level for each issue, a date of creation for each issue, and a name of one or more stakeholders presenting an issue.

However, Marpe teaches organizational charts of the merger and acquisition process [0507, 533], and a planning guide application displaying information regarding employee redeployment and prioritizing defined work [0548, 0698], and an issue screen [0397].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lineberry to include employee redeployment information as taught by Marpe in order to expedite the employee redeployment procedures so that reassignment decisions can be made more efficiently for the merger and acquisition tasks and activities.

Lineberry does not expressly disclose information *for* one or more organization headcounts pending approval, information *for* employee layoffs.

However, Sankaran teaches headcount types and categories and a headcount model [0054, 70-71]. Sankaran further teaches where headcount is a business driver and is represented by the headcount plan object [0072].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lineberry to include headcount information as taught by Sankaran in order to provide all the needed information required in order to acquire a headcount value.

Examiner notes, with respects to claims 33 and 44, Lineberry discloses an acquisition integration planning electronic interface, however Lineberry fails to expressly disclose "...information *for* one or more organization headcounts pending approval, information *for* employee layoffs." However the specific types of information being displayed via the interface, is deemed to be nonfunctional descriptive material and is not functionally involved in the steps recited. The providing of an organizational planning interface would be performed the same regardless of what information is being displayed. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F .2d 1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); *In re Lowry*, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir.1994).

As per claims 34 and 45, Lineberry discloses a user interfaces that include links to an AIF main user interface, an intellectual property overview user interface, an intellectual property "Do's and Don'ts" user interface, an intellectual property contacts user interface, an intellectual property examples user interface, an intellectual property links user interface and an intellectual property project plan user interface [0069], but does not expressly disclose presenting a link to an

employee redeployment, a link to an organizational personnel structure, a link presenting a headcount planner, a link presenting an employee retention tool, and a link presenting an employee compensation tool on the organizational planning interface.

However, Marpe teaches organizational charts of the merger and acquisition process [0507, 533], and a planning guide application displaying information regarding employee redeployment, and retention [0548, 0659, 0698], and payment processing [0638].

Furthermore, Marpe teaches wherein the merger and acquisition engine promotes standardization of processes that are applicable to individual areas such as status reporting, business case development, and budget and benefits monitoring [0096]. Lastly, Marpe teaches interface modality that features link icons or markers that can be arbitrarily embedded with the contents and can be used for navigational purposes [0110].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the user interface links of Lineberry and the acquisition integration project plan of the Lineberry/Zhang/Marpe/Sankaran/Adler/Mittal combination to include employee redeployment and retention information and user interface links as taught by Marpe in order to efficiently make the integration transition information available via links provided by user interfaces as per managerial or user request or operation.

As per claims 35, 46 and 36, 47 Lineberry further discloses:

wherein said graphical user interface is individually configurable by the user to eliminate and add any one of said links, information, and tools.

wherein said graphical user interface is individually configurable to eliminate and add any of said links, said information, and said tools
([0055-56, 61 and Fig. 4] user interfaces for an acquisition integration framework tool; included on user interface are selectable links, and feedback links where user can provide comments).

wherein one of said interfaces presents organizational information, a financial statement, an organizational historical statement, a background statement, investor information, and answers to frequently asked questions ([0060] financial integration area includes treasury, Euro programs, financial planning, closing reporting, tax integration, controllership, and insurance; see also [0064] AIF main user interface, an overview user interface, a Do's/Don'ts user interface, a contacts user interface, and examples user interface, a links user interface and a project plan user interface, and where the user interfaces are configured for the integration area displayed; see also [0066-73] business leader integration area and deliverables checklist user interface...pre-closing to post-closing).

Furthermore, claims 35, 36, 46 and 47 are directed to nonfunctional descriptive material and it is not functionally involved in the steps recited. This nonfunctional descriptive material *in a apparatus claim (46-47) are not given patentable weight, and even when recited in a method claim (35-36), will not distinguish the claimed invention from the prior art in terms of patentability.* See *In re Gulack*, 703 F .2d 1381, 1385, 217 USPQ

401,404 (Fed.Cir.1983); *In re Lowry*, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) and MPEP 2106.01.

Claims 30 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lineberry in view of Zhang in view of Marpe in view of Sankaran and in further view of Pond (WO 02/19227 A1).

As per claims 30 and 41, Lineberry/Zhang/Marpe/Sankaran discloses all of the elements of the claimed invention but do not expressly disclose:

permitting a user to define one or more parameters for tracking absenteeism of an employee, including creation of a graphical calendar indicating one or more days of absenteeism and wherein the monitoring information further includes a picture of one or more employees.

However, Pond teaches a method and system for tracking employee data, and more particularly relates to an automated system and method for reporting and recording events such as events related to an employee's attendance for tracking and scheduling purposes (Abstract & Pg. 1, lines 1-4). In addition, Pond teaches wherein in the event more than one employee will be late or absent on a given day the manager may review all of the recorded events so that rescheduling and reassignment decisions can be made (Pg. 2, line 22 – Pg. 3, line 5). Lastly, Pond teaches a browser interface and employee attendance server (Pg. 2, lines 7-9 and Fig. 7 information regarding attendance events are displayed graphically 222).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the acquisition transition method and system of the Lineberry/Zhang/Marpe/Sankaran combination to include the monitoring of employee attendance as taught by Pond in order to provide a much faster, easier, less expensive, and more thorough attendance tracking system and method.

Please Note:

Examiner has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the response, to consider fully the entire references as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.

Applicant(s) are reminded that optional or conditional elements do not narrow the claims because they can always be omitted. See *e.g.* MPEP §2106 II C: “Language that suggest or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. [Emphasis in original.]”; and *In re Johnston*, 435 F.3d 1381, 77 USPQ2d 1788, 1790 (Fed. Cir. 2006) “As a matter of linguistic

precision, optional elements do not narrow the claim because they can always be omitted.” *In re Johnston*, 435 F.3d 1381, 77 USPQ2d 1788, 1790 (Fed. Cir. 2006)(where the Federal Circuit affirmed the Board’s claim construction of “further including that said wall may be smooth, corrugated, or profiled with increased dimensional proportions as pipe size is increased” since “this additional content did not narrow the scope of the claim because these limitations are stated in the permissive form ‘may.’”).

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *e.g. In re Collier*, 158 USPQ 266, 267 (CCPA 1968)(where the court interpreted the claimed phrase “a connector member for engaging shield means” and held that the shield means was not a positive element of the claim since “[t]here is no positive inclusion of ‘shield means’ in what is apparently intended to be a claim to structure consisting of a combination of elements.” As a courtesy, the Examiner has bolded and italicized the claim language considered as intended use.

Functional recitation(s) using the word “for” (e.g. “information ***for*** a financial impact, ***for*** employee redeployment, etc.” as recited in claims 33 and 44) have been considered but given less patentable weight^[1] because they fail to add any steps and are thereby regarded as intended

^[1] See *e.g. In re Gulack*, 703 F.2d 1381, 217 USPQ 401, 404 (Fed. Cir. 1983)(stating that although all limitations must be considered, not all limitations are entitled to patentable weight.).

use language. A recitation of the intended use of the claimed invention must result in additional steps. See *Bristol-Myers Squibb Co. v. Ben Venue Laboratories, Inc.*, 246 F.3d 1368, 1375-76, 58 USPQ2d 1508, 1513 (Fed. Cir. 2001) (Where the language in a method claim states only a purpose and intended result, the expression does not result in a manipulative difference in the steps of the claim.).

Response to Arguments

Applicant's arguments filed 5/7/2009 have been fully considered but they are not persuasive. In the remarks, Applicant argues that:

Claim 1

(1) Lineberry, Zhang, and Marpe do not disclose any of the limitations: (i) "filtering, via a headcount analysis user interface, one or more organizational units of a first enterprise[.]" (ii) "displaying, at the headcount analysis user interface, a headcount of the first enterprise during a specified time period[.]" and (iii) "modifying, via a headcount planning module, current headcounts of the first enterprise according to headcount information from a second enterprise[.]"

Claim 29

(2) Applicants are unable to find the term "headcount" or similar terms anywhere in Digate. Applicants respectfully submit that since Digate does not disclose headcounts, it follows that Digate does not disclose the headcount analysis and modification features. Digate does not disclose the limitations "headcount analysis user interface" or "headcount planning module", let alone the headcount analysis and modification limitations of Applicants' newly amended claim 29.

Applicants respectfully submit that Lineberry, Zhang, Marpe, and Digate, whether viewed separately, or in combination, do not disclose each and every limitation of Applicants' newly amended claims 1 or 29.

Claims 37 and 40

(3) Applicants have amended claims 37 and 40 to include limitations similar to that of claims 1 and 29, respectively. Therefore, Applicants respectfully submit that claims 37 and 40 are in condition for allowance as well. Since the remaining claims depend, either directly or indirectly, from claims 1 or 37, Applicants respectfully submit that those claims are also in condition for allowance.

In response to argument(s) (1)-(3), Examiner respectfully disagrees. Based on the new grounds of rejection, Applicant's argument(s) are moot. See rejection above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BOB CHUMPITAZ whose telephone number is (571)270-5494. The examiner can normally be reached on M-TR: 7:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN WEISS can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-270-6494.

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B. C.
Examiner, Art Unit 3629

/JOHN G. WEISS/
Supervisory Patent Examiner, Art Unit 3629